

By: William

S.B. No. 957

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Department of
Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ^{Subsection (a),} Section 51.202~~(a)~~, Occupations Code, is amended
to read as follows:

(a) The commission shall set fees, in amounts reasonable and
necessary to cover the costs of administering the programs or
activities, for:

- (1) licenses issued by the department;
- (2) license renewals and late renewals;
- (3) examinations; ~~and~~
- (4) continuing education; and
- (5) ~~any other~~ any other program or activity administered by
the department for which a fee is authorized.

SECTION 2. Subchapter D, Chapter 51, Occupations Code, is
amended by adding Section 51.209 to read as follows:

Sec. 51.209. SUBPOENA. (a) The commission or executive
director may request and, if necessary, compel by subpoena:

- (1) the production for inspection and copying of
records, documents, and other evidence relevant to the
investigation of an alleged violation of this chapter, a law
establishing a regulatory program administered by the department,
or a rule adopted or order issued by the commission or executive

1 director; and

2 (2) the attendance of a witness for examination under
3 oath.

4 (b) A subpoena may be issued throughout the state and may be
5 served by any person designated by the commission or executive
6 director.

7 (c) The department, acting through the attorney general,
8 may bring an action to enforce a subpoena issued under this section
9 against a person who fails to comply with the subpoena.

10 (d) Venue for an action brought under this section is in a
11 district court in:

12 (1) Travis County; or

13 (2) any county in which the department may hold a
14 hearing.

15 (e) The court shall order compliance with the subpoena if
16 the court finds that good cause exists to issue the subpoena.

17 (f) The authority of the commission or executive director to
18 issue a subpoena under this section may not be delegated to another
19 person.

20 SECTION 3. Section 51.353, Occupations Code, is amended to
21 read as follows:

22 Sec. 51.353. LICENSE REFUSAL; ADMINISTRATIVE SANCTIONS.

23 (a) The commission shall revoke, suspend, or refuse to issue or
24 renew a license or shall reprimand a license holder for a violation
25 of this chapter, a law establishing a regulatory program
26 administered by the department, or a rule or order of the commission
27 or executive director.

1 (b) The commission may probate the suspension of a [~~place on~~
2 ~~probation a person whose~~] license [~~is suspended~~]. If a license
3 suspension is probated, the commission may require the person to:

4 (1) report regularly to the department on matters that
5 are the basis of the probation;

6 (2) limit practice to the areas prescribed by the
7 commission; or

8 (3) continue or renew professional education until the
9 person attains a degree of skill satisfactory to the commission in
10 those areas that are the basis for the probation.

11 SECTION 4. Subchapter G, Chapter 51, Occupations Code, is
12 amended by adding Sections 51.355 and 51.356 to read as follows:

13 Sec. 51.355. CEASE AND DESIST ORDERS. The executive
14 director may issue a cease and desist order if the executive
15 director determines that the action is necessary to prevent a
16 violation of:

17 (1) this chapter;

18 (2) a law establishing a regulatory program
19 administered by the department; or

20 (3) a rule adopted or order issued by the commission or
21 executive director.

22 Sec. 51.356. EMERGENCY ORDERS. (a) The executive director
23 may issue an emergency order, including an order to suspend or
24 revoke a license or to cease operation of unsafe equipment,
25 including an unsafe elevator or unsafe boiler, if the executive
26 director determines that an emergency exists requiring immediate
27 action to protect the public health and safety.

1 (b) The executive director may issue the emergency order
2 with or without notice and hearing as the executive director
3 considers practicable under the circumstances.

4 (c) If an emergency order is issued under this section
5 without a hearing, the executive director shall set the time and
6 place for a hearing conducted by the State Office of Administrative
7 Hearings to affirm, modify, or set aside the emergency order not
8 later than the 10th day after the date the order was issued. The
9 order shall be affirmed to the extent that reasonable cause existed
10 to issue the order.

11 (d) The commission by rule may prescribe procedures for the
12 determination and appeal of an emergency order under this section,
13 including a rule allowing the commission to affirm, modify, or set
14 aside a decision made by the State Office of Administrative
15 Hearings under Subsection (c).

16 (e) A proceeding under this section is a contested case
17 under Chapter 2001, Government Code.

18 SECTION 5. Subchapter H, Chapter 51, Occupations Code, is
19 amended by adding Sections 51.407, 51.408, and 51.409 to read as
20 follows:

21 Sec. 51.407. DEFERRED ADJUDICATION; REFUSAL TO ISSUE OR
22 RENEW LICENSE. The commission may refuse to issue or renew a
23 license if the commission determines that a deferred adjudication
24 makes the person seeking the license unfit for a license.

25 Sec. 51.408. TEMPORARY LICENSE. (a) The commission by rule
26 may provide for the issuance of a temporary license to an applicant
27 who:

1 (1) submits to the executive director an application
2 on a form prescribed by the executive director;

3 (2) meets preliminary qualifications established by
4 commission rule; and

5 (3) pays the required fees.

6 (b) A temporary license expires on the 21st day after the
7 date of issuance and may not be renewed.

8 (c) A temporary license holder is subject to:

9 (1) this chapter;

10 (2) any law applicable to the activity for which the
11 license is required; and

12 (3) any rule or order of the commission or the
13 executive director applicable to the license.

14 Sec. 51.409. EMERGENCY LICENSE. (a) The executive
15 director may issue an emergency license to a person who meets
16 eligibility requirements provided by:

17 (1) a law establishing a regulatory program
18 administered by the department; or

19 (2) a rule adopted to implement this section.

20 (b) The license expires on the date indicated by the
21 executive director, but may not exceed the 90th day after the date
22 of issuance.

23 (c) The emergency license holder may engage in the
24 activities indicated by the type of license only:

25 (1) during a time declared as a state of disaster and
26 the following recovery period; and

27 (2) in an area designated as a disaster area by:

1 (A) the governor; or
2 (B) the presiding officer of a governing body of
3 a political subdivision.

4 SECTION 6. This Act takes effect September 1, 2005.

BILL ANALYSIS

Senate Research Center
79R4394 MXM-F

S.B. 957
By: Williams
Business & Commerce
4/13/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Department of Licensing and Regulation (TDLR) serves as the state's umbrella licensing agency, with regulatory authority over 22 different programs. In the interest of efficient and effective regulation, the legislature has seen fit to expand TDLR's duties substantially over the last few sessions. This incremental expansion of the TDLR umbrella has resulted in a patchwork of different regulatory authorities across different programs. S.B. 957 provides consistency across all TDLR's regulatory programs to allow for greater efficiency and more successful enforcement.

As proposed, S.B. 957 gives TDLR consistent authority in regard to: (1) cease and desist orders; (2) emergency orders; (3) subpoena authority; (4) the issuance of emergency licenses; (5) certain fees; and (6) license denial under certain circumstances.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 4 (Section 51.356, Occupations Code) and SECTION 5 (Section 51.408, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.202(a), Occupations Code, to include continuing education amongst the programs and activities for which the Texas Commission of Licensing and Regulation (commission) is required to set fees necessary to cover the costs of administration. Makes a nonsubstantive change.

SECTION 2. Amends Subchapter D, Chapter 51, Occupations Code, by adding Section 51.209, as follows:

Sec. 51.209. SUBPOENA. (a) Authorizes the commission or the executive director of the Texas Department of Licensing and Regulation (executive director) to request and, if necessary, compel by subpoena, certain actions related to investigating a violation of this chapter.

(b) Authorizes a subpoena to be issued throughout the state and to be served by any person designated by the commission or executive director.

(c) Authorizes the Texas Department of Licensing and Regulation (TDLR), acting through the attorney general, to bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(d) Provides that venue for an action brought under this section is in a district court in Travis County or any county in which TDLR is authorized to hold a hearing.

(e) Requires the court to order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

(f) Prohibits the authority of the commission or executive director to issue a subpoena under this section from being delegated to another person.

SECTION 3. Amends Section 51.353, Occupations Code, as follows:

Sec. 51.353. New heading: LICENSE REFUSAL; ADMINISTRATIVE SANCTIONS.

(a) Requires the commission to revoke, suspend, or refuse to issue or renew a license or to reprimand a license holder for a violation of this chapter, a law establishing a regulatory program administered by the department, or a rule or order of the commission or executive director.

(b) Authorizes the commission to probate the suspension of a license, rather than place on probation a person whose license is suspended. Authorizes the commission to require the person to meet certain requirements if a license suspension is probated.

SECTION 4. Amends Subchapter G, Chapter 51, Occupations Code, by adding Sections 51.355 and 51.356, as follows:

Sec. 51.355. CEASE AND DESIST ORDERS. Authorizes the executive director to issue a cease and desist order if the executive director determines that the action is necessary to prevent certain violations.

Sec. 51.356. EMERGENCY ORDERS. (a) Authorizes the executive director to issue an emergency order if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) Authorizes the executive director to issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) Requires the executive director to set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside an emergency order not later than the 10th day after the date the order was issued if the order is issued without a hearing. Requires the order to be affirmed to the extent that reasonable cause existed to issue the order.

(d) Authorizes the commission, by rule, to prescribe procedures for the determination and appeal of an emergency order under this section.

(e) Provides that a proceeding under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 5. Amends Subchapter H, Chapter 51, Occupations Code, by adding Sections 51.407, 51.408, and 51.409, as follows:

Sec. 51.407. DEFERRED ADJUDICATION; REFUSAL TO ISSUE OR RENEW LICENSE. Authorizes the commission to refuse to issue or renew a license if the commission determines that a deferred adjudication makes the person seeking the license unfit for a license.

Sec. 51.408. TEMPORARY LICENSE. (a) Authorizes the commission, by rule, to provide for the issuance of a temporary license to an applicant who meets certain requirements.

(b) Provides that a temporary license expires on the 21st day after the date of issuance and is prohibited from being renewed.

(c) Provides that a temporary license holder is subject to certain rules and regulations.

Sec. 51.409. EMERGENCY LICENSE. (a) Authorizes the executive director to issue an emergency license to a person who meets certain eligibility requirements.

(b) Provides that the license expires on the date indicated by the executive director, but is prohibited from exceeding the 90th day after the date of issuance.

(c) Authorizes the emergency license holder to engage in activities indicated by the type of license, with certain limitations.

SECTION 6. Effective date: September 1, 2005.

By: Williams S.B. No. 957
 (In the Senate - Filed March 3, 2005; March 14, 2005, read first time and referred to Committee on Business and Commerce; April 20, 2005, reported favorably by the following vote: Yeas 7, Nays 0; April 20, 2005, sent to printer.)

A BILL TO BE ENTITLED
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(1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter, a law establishing a regulatory program administered by the department, or a rule adopted or order issued by the commission or executive director; and

(2) the attendance of a witness for examination under oath.

(b) A subpoena may be issued throughout the state and may be served by any person designated by the commission or executive director.

(c) The department, acting through the attorney general, may bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(d) Venue for an action brought under this section is in a district court in:

- (1) Travis County; or
- (2) any county in which the department may hold a hearing.

(e) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

(f) The authority of the commission or executive director to issue a subpoena under this section may not be delegated to another person.

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(b) The commission may probate the suspension of a ~~[place on probation a person whose]~~ license ~~[is suspended]~~. If a license suspension is probated, the commission may require the person to:

- (1) report regularly to the department on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the commission; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation.

SECTION 4. Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.355 and 51.356 to read as follows:

Sec. 51.355. CEASE AND DESIST ORDERS. The executive director may issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of:

- (1) this chapter;
- (2) a law establishing a regulatory program administered by the department; or
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(b) The executive director may issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued. The order shall be affirmed to the extent that reasonable cause existed to issue the order.

(d) The commission by rule may prescribe procedures for the determination and appeal of an emergency order under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

(e) A proceeding under this section is a contested case under Chapter 2001, Government Code.

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- (1) submits to the executive director an application on a form prescribed by the executive director;
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- (3) pays the required fees.

(b) A temporary license expires on the 21st day after the date of issuance and may not be renewed.

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Sec. 51.409. EMERGENCY LICENSE. (a) The executive director may issue an emergency license to a person who meets eligibility requirements provided by:

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(b) The license expires on the date indicated by the executive director, but may not exceed the 90th day after the date of issuance.

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FAVORABLE
SENATE COMMITTEE REPORT ON

SB SCR SJR SR HB HCR HJR 957
By Williams
(Author/Senate Sponsor)
April 20, 2005
(date)

We, your Committee on BUSINESS AND COMMERCE, to which was referred the attached measure,
have on April 14, 2005, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

☒ do pass and be printed

☐ do pass and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Troy Fraser, Chairman	<input checked="" type="checkbox"/>			
Senator Kip Averitt, Vice-Chairman	<input checked="" type="checkbox"/>			
Senator Ken Armbrister			<input checked="" type="checkbox"/>	
Senator Kim Brimer	<input checked="" type="checkbox"/>			
Senator John Carona	<input checked="" type="checkbox"/>			
Senator Kevin Eltife			<input checked="" type="checkbox"/>	
Senator Craig Estes	<input checked="" type="checkbox"/>			
Senator Eddie Lucio	<input checked="" type="checkbox"/>			
Senator Leticia Van de Putte	<input checked="" type="checkbox"/>			
TOTAL VOTES	7		2	

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken

John Baker
COMMITTEE CLERK

Ty Fran
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill
Retain one copy of this form for Committee files

WITNESS LIST

SB 957

SENATE COMMITTEE REPORT

Business & Commerce

April 14, 2005 - 9:00AM

Registering, but not testifying:

On: Kuntz, William H. (Texas Department of Licensing and Regulation), Austin, TX

BILL ANALYSIS

Senate Research Center
79R4394 MXM-F

S.B. 957
By: Williams
Business & Commerce
4/13/2005
As Filed

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As proposed, S.B. 957 gives TDLR consistent authority in regard to: (1) cease and desist orders; (2) emergency orders; (3) subpoena authority; (4) the issuance of emergency licenses; (5) certain fees; and (6) license denial under certain circumstances.

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(c) Authorizes the Texas Department of Licensing and Regulation (TDLR), acting through the attorney general, to bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(d) Provides that venue for an action brought under this section is in a district court in Travis County or any county in which TDLR is authorized to hold a hearing.

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Sec. 51.353. New heading: LICENSE REFUSAL; ADMINISTRATIVE SANCTIONS.

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(b) Authorizes the executive director to issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) Requires the executive director to set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside an emergency order not later than the 10th day after the date the order was issued if the order is issued without a hearing. Requires the order to be affirmed to the extent that reasonable cause existed to issue the order.

(d) Authorizes the commission, by rule, to prescribe procedures for the determination and appeal of an emergency order under this section.

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SECTION 6. Effective date: September 1, 2005.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 13, 2005

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB957 by Williams (Relating to the powers and duties of the Texas Department of Licensing and Regulation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Occupations Code by stating that the Department of Licensing and Regulation (TDLR), acting through the attorney general, may bring an enforcement action in district court to enforce a subpoena that is issued by TDLR's executive director against a person who fails to comply with the subpoena. The bill states the venue for a subpoena enforcement action lies either in Travis County or any county in which TDLR may hold a hearing. Also, the bill would provide TDLR's executive director the authority to issue emergency orders with or without notice of a hearing.

The Office of the Attorney General (OAG) anticipates that costs of enforcement actions issued by TDLR's executive director in district court could be absorbed with current resources. TDLR estimates a least four OAG referrals per year and anticipates no significant fiscal impact.

According to the State Office of Administrative Hearings (SOAH), if an emergency order with or without notice of a hearing is issued, the executive director must set a hearing with SOAH to affirm, modify, or set aside the emergency order no later than 10 days after the order was issued. SOAH anticipates costs associated with implementing the provisions of the bill could be absorbed with current resources. TDLR anticipates at least two referrals per year and anticipates no significant fiscal impact.

The bill would take effect September 1, 2005.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 360 State Office of Administrative Hearings, 452 Department of Licensing and Regulation

LBB Staff: JOB, JRO, MW, RR


REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SB 957, by Williams,
(Bill No.) (Author/Sponsor)

was heard by the Committee on Business and Commerce on April 4,
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.


(Clerk of the reporting committee)

IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.

S.B. No. 957

By Willia

A BILL TO BE ENTITLED

AN ACT relating to the powers and duties of the Texas Department of Licensing and Regulation.

MAR 3 2005

Filed with the Secretary of the Senate

BUSINESS AND
COMMERCE

MAR 14 2005

Read and referred to Committee on

APR 20 2005

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

APR 28 2005

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by:

{ unanimous consent

{ _____ yeas, _____ nays

APR 28 2005

Read second time, _____, and ordered engrossed by:

{ ~~unanimous consent~~
a viva voce vote

{ _____ yeas, _____ nays

APR 28 2005

Senate and Constitutional 3 Day Rule suspended by a vote of 31 yeas, 0 nays.

APR 28 2005

Read third time, _____, and passed by:

{ ~~A viva voce vote~~

{ 31 yeas, 0 nays

Latoy Spaw
SECRETARY OF THE SENATE

OTHER ACTION:

April 28, 2005 Engrossed

Sent to House

Engrossing Clerk

Nandi Alexander

APR 28 2005

Received from the Senate

MAY 02 2005

Read first time and referred to Committee on Licensing & Administrative Procedures

Reported _____ favorably (as amended) (as substituted)

Sent to Committee on (Calendars) (Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting.

Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

Returned to Senate.

CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays